such damage is not merely consequential but a direct appropriation of property rights, for which compensation is required by the Constitution. A note to this case analyzes the decisions on the right of cities to drain sewage into waters.

Contrary to the above decision it is held, in *Valparaiso* v. *Hagen* (Ind.), 48 L. R. A. 707, that such damages are merely consequential and give riparian owners no right to compensation, where the sewage is discharged skillfully and in conformity to statute. This doctrine seems peculiar to Indiana.

Such a nuisance is held in *Smith* v. *Sedalia* (Mo.), 48 L. R. A. 711, to be a private one, for which the landowner may maintain a private action for damages. This case also holds that there is a constitutional right to compensation for such damages under a provision against taking or "damaging" private property without just compensation.

The discharge of such sewers into a river where the tide ebbs and flows, if authorized by statute, is held, in *Grey* v. *Paterson* (N. J.), 48 L. R. A. 717, to give riparian owners no right to damages, as their title extends only to high-water mark; but above the ebb and flow of the tide, where their title extends to the middle of the stream, the pollution of the river by sewage is held to give them a right to just compensation. *Sayre* v. *Newark* (N. J.), 48 L. R. A. 722, is another case in the same state, to the same effect, holding that the legislature can confer the right to use tidal streams as outlets for public sewers, and that a pollution thereby of the water and air in the neighborhood of a dock, lessening the value of the private property, would not justify an injunction against constructing and operating the sewer.

NEGLIGENCE—DAMAGE CAUSED BY FRIGHT.—Plaintiff alleged in her complaint that while boarding defendant's train as a passenger, with her infant daughter, the latter was put in serious peril by the negligent starting of the train, causing nervous shock to the plaintiff, whereby she was made seriously ill. *Held*, The complaint does not state a cause of action. *Cleveland etc. R. Co.* v. *Stewart* (Ind.), 56 N. E. 917.

This case involves the somewhat novel question whether one may recover for fright, resulting in serious impairment of health, when such fright arises not from threatened injury to himself, but to another person. By the weight of authority, mere fright, unaccompanied by direct physical injury, does not give rise to a cause of action, even though as the result of the fright there be an impairment of the physical health and powers, and the fright be due to a peril threatening the plaintiff himself. *A fortiori*, as the Indiana court holds, is fright caused by another's peril, not actionable.

The grounds upon which the courts deny a right of action for injury resulting merely from fright, are generally stated to be public policy—as tending to the increase of litigation in negligence cases—and the consideration that injury by fright is not the natural and ordinary consequence of the defendant's negligence. *Commissioners* v. *Coultas*, 13 App. Cas. 222; *Erving* v. *Railway Co.*, 147 Pa. St. 40, 13 Atl. 340, 14 L. R. A. 666; *Braum* v. *Craven* (Ill.), 51 N. E. 657, 42 L. R. A. 199; *Spade* v. *Railroad Co.*, 168 Mass. 286, 47 N. E. 89, 38 L. R. A. 513.

In *Hill* v. *Kimball*, 76 Tex. 210, 7 L. R. A. 618, the plaintiff recovered damages for a miscarriage produced by fright, resulting from a violent assault by the defendant (her landlord) upon some negroes on the premises, and in her presence

—the defendant knowing her condition. The knowledge of the defendant, differentiates this case from the principal case. See also *Barbee* v. *Reese*, 60 Miss. 960, and other cases, *pro* and *con*, collected in note 14 L. R. A. 666; 8 Am. & Eng. Enc. Law (2d ed.), 865–868.

As to the recovery for mental anguish in telegraph cases, see note to *Western Union Tel. Co.* v. *Goddin*, 3 Va. Law Reg. 222, by Prof. Burks.

PARTNERSHIP—ACTION BY ONE PARTNER AGAINST COPARTNER, AT LAW —BREACH OF STIPULATION.—Plaintiff and defendants were partners in the business of growing and shipping fruit. Under their articles, it was the duty of the defendants to provide crates for shipping. By reason of a breach of this stipulation, damages resulted to the firm. During the continuance of the copartnership, plaintiff brought an action at law against defendants to recover his proportion of the damages thus suffered—the complaint alleging that there were no partnership debts and no unsettled accounts between the parties save the claim asserted. On demurrer it was *Held*, That the action at law would not lie—*Miller* v. *Freeman* (Ga.), 36 S. E. 961.

The opinion in this case, by Simmons, C. J., contains a learned discussion of the principle under which one partner may sue another at law, for breach of some stipulation in the partnership articles. In Story on Partnership, 218, the rule is stated to be that "Wherever there is an express stipulation in the partnership articles, which is violated by any partner, an action at law (either assumpsit or covenant, as the case may require) will ordinarily lie to recover damages for the breach thereof." Under this statement of the rule, the plaintiff in the principal case might have maintained his action. The court holds, however, that Judge Story's statement is too broad, and is not sustained by the authorities, and that the true rule is, that laid down in *Hill* v. *Palmer*, 56 Wis. 130, 14 N. W. 23, viz., "If the damages resulting from a breach of a covenant or stipulation in the partnership agreement by one partner, *belong exclusively to the other partner*, and can be assessed without taking an account of the partnership business, covenant or assumpsit may be maintained by the injured partner against the other for such damage." The test as stated by Collyer (Partn., 196) is, whether the damage flowing from the breach is damage to the partnership, and the recovery therefore payable into the firm treasury, or is individual to the plaintiff. To the same effect is Lindley on Partn. (Rapalje's Ed.) p. 456.

"Where, therefore," says the court, "the stipulation is an agreement by one partner individually to do something for the benefit of the other individually, and imposes an obligation binding the one personally to the other, its breach gives a right of action at law, if the damages can be assessed without an investigation of the partnership accounts. But where the stipulation is for the benefit of the partnership, and consequently of both partners, neither partner alone has a right, the partnership relation existing, to sue in his own name, and at law, for the damages arising from its breach. There was in the present case no covenant to furnish crates, but merely an agreed distribution of partnership duties, by which the duty of securing crates was put upon the defendants, while the cost of the crates was to be defrayed by the partnership. The defendants did not agree to contribute the crates, but merely to see that crates were procured. The crates were to be used,